

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Corwin	Team: Squad #10	CCRB Case #: 201902748	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/27/2019 12:45 AM	Location of Incident: § 87(2)(b)	Precinct: 14	18 Mo. SOL 9/27/2020	EO SOL 5/14/2021	
Date/Time CV Reported Fri, 03/29/2019 3:07 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 03/29/2019 3:07 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Edward Ahearne	30507	953620	MTS PCT
2. DTS Joseph Bonner	4834	915329	MTS PCT
3. POM Matthew Kelleher	09770	963589	MTS PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Mariama Diallo	07690	966029	MTS PCT
2. POM Ryan Baker	11982	938015	MTS PCT
3. POM Philip Depasquale	27704	922240	MTS PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Edward Ahearne	Force: Police Officer Edward Ahearne used physical force against § 87(2)(b)	§ 87(2)(b)
B.POM Edward Ahearne	Force: Police Officer Edward Ahearne used physical force against § 87(2)(b)	§ 87(2)(b)
C.POM Edward Ahearne	Discourtesy: Police Officer Edward Ahearne spoke discourteously to § 87(2)(b)	§ 87(2)(b)
D.DTS Joseph Bonner	Force: Detective Joseph Bonner used physical force against § 87(2)(b)	§ 87(2)(b)
E.DTS Joseph Bonner	Force: Detective Joseph Bonner struck § 87(2)(b) with a nightstick.	§ 87(2)(b)
F.POM Edward Ahearne	Abuse: Police Officer Edward Ahearne damaged § 87(2)(b)'s property.	§ 87(2)(b)
G.POM Edward Ahearne	Abuse: Police Officer Edward Ahearne forcibly removed § 87(2)(b) to the hospital	§ 87(2)(b)
H.POM Matthew Kelleher	Abuse: Police Officer Matthew Kelleher searched § 87(2)(b)	§ 87(2)(b)
I.POM Edward Ahearne	Abuse: Police Officer Edward Ahearne frisked § 87(2)(b)	§ 87(2)(b)
J.POM Edward Ahearne	Abuse: Police Officer Edward Ahearne searched § 87(2)(b)	§ 87(2)(b)

Case Summary

On March 29, 2019, § 87(2)(b) filed the following complaint with the CCRB by phone.

At approximately 12:45 a.m. on March 27, 2019, § 87(2)(b) was at § 87(2)(b) in Manhattan, when a store employee called the police because he wanted § 87(2)(b) to leave the establishment. Police Officer Edward Ahearne, Police Officer Matthew Kelleher, Police Officer Mariama Diallo, and Detective Joseph Bonner, all of Midtown South, responded to the store and told § 87(2)(b) to leave. After initially refusing, § 87(2)(b) exited, but remained directly in front of the entrance. PO Ahearne followed him outside and told him to leave. § 87(2)(b) took his phone out and started taking a video and PO Ahearne allegedly hit him in the face twice (**Allegation A: Force: Physical Force: § 87(2)(g)**). PO Ahearne grabbed § 87(2)(b)'s upper body and pushed him approximately ten feet, causing them both to fall to the ground (**Allegation B: Force: Physical Force: § 87(2)(g)**). Once PO Ahearne and § 87(2)(b) were on the ground, PO Ahearne said, "Take a fucking hike," to § 87(2)(b) (**Allegation C: Discourtesy: Word: § 87(2)(g)**).

While § 87(2)(b) was on the ground, he was placed in handcuffs. Detective Bonner then allegedly stood on his legs and feet (**Allegation D: Force: Physical Force: § 87(2)(g)**). Det. Bonner then turned § 87(2)(b) on his back and allegedly hit him in the chest with his nightstick (**Allegation E: Force: Nightstick as club: § 87(2)(g)**). At some point, while § 87(2)(b) was on the ground, his phone was lying next to him. PO Ahearne allegedly stepped on the phone, causing the screen to crack (**Allegation F: Abuse of Authority: Property Damaged: § 87(2)(g)**). PO Ahearne called an ambulance to the location and § 87(2)(b) was taken to § 87(2)(b) where he underwent a psychological evaluation (**Allegation G: Abuse of Authority: Forcible removal to Hospital: § 87(2)(g)**). Before the ambulance arrived, PO Kelleher looked in § 87(2)(b)'s wallet to find ID (**Allegation H: Abuse of Authority: Search: § 87(2)(g)**). PO Ahearne frisked § 87(2)(b)'s pockets and then pushed an object out of the pocket (**Allegation I: Abuse of Authority: Frisk: § 87(2)(g)** and **Allegation J: Abuse of Authority: Search: § 87(2)(g)**).

The investigation obtained body-worn camera footage from PO Ahearne and prepared a detailed summary of it (**Board Review 01** and **02**). The investigation did the same for PO Kelleher's BWC (**Board Review 03** and **04**), PO Diallo's BWC (**Board Review 05** and **06**), and Detective Bonner's BWC (**Board Review 07** and **08**). The investigation also obtained camera footage from § 87(2)(b) (**Board Review 09**) and prepared a detailed summary of the footage (**Board Review 10**).

Findings and Recommendations

Allegation A: Force: Police Officer Edward Ahearne used physical force against § 87(2)(b)

Allegation B: Force: Police Officer Edward Ahearne used physical force against § 87(2)(b)

Allegation G: Abuse of Authority: Police Officer Edward Ahearne forcibly removed § 87(2)(b) to the hospital.

§ 87(2)(b) provided a phone statement on April 03, 2019 (**Board Review 11**) and a statement at the CCRB on April 08, 2019 (**Board Review 12**). PO Ahearne and PO Kelleher provided statements at the CCRB on September 19, 2019 (**Board Review 13** and **14**), and Detective Bonner provided a statement to the CCRB on October 10, 2019 (**Board Review 15**).

It was undisputed that employees of the establishment told § 87(2)(b) to leave and he refused. When PO Ahearne, PO Kelleher, PO Diallo, and Detective Bonner arrived, they also told § 87(2)(b) to leave multiple times and he refused multiple times before eventually walking outside. Once outside, § 87(2)(b) refused multiple orders by PO Ahearne to walk away from the area

directly in front of the store.

§ 87(2)(b) stated that after he left the establishment, PO Ahearne told him that the employees did not want him there and told him to leave again repeatedly, but § 87(2)(b) responded that he was outside, so there was no problem. After § 87(2)(b) was outside for approximately one minute, he took out his phone and started recording a video. PO Ahearne then hit § 87(2)(b) with his open right hand on the left side of § 87(2)(b)'s face and then hit § 87(2)(b) with his closed left fist on the right side of § 87(2)(b)'s face, causing § 87(2)(b) to fall backwards. § 87(2)(b) was put in handcuffs and was on the ground yelling and crying. Two EMTs and an ambulance arrived at the scene. § 87(2)(b) did not ask to go in an ambulance or say that he wanted to go to the hospital. The EMTs picked § 87(2)(b) up and placed him on a gurney and put him in the ambulance. PO Ahearne got in the ambulance with § 87(2)(b) and a police car followed the ambulance. They drove to § 87(2)(b) where § 87(2)(b) received a psychiatric evaluation.

PO Ahearne stated that when he arrived at § 87(2)(b) he spoke with an employee who told him that § 87(2)(b) had threatened to “beat the shit” out of the employees who asked him to leave. Once § 87(2)(b) stepped outside the establishment, he stood next to the entrance and took out his cell phone and began recording PO Ahearne. PO Ahearne would not leave the scene until he was sure § 87(2)(b) was gone, because he thought § 87(2)(b) might walk back in as soon as the officers left and threaten the staff or refuse to leave. PO Ahearne told § 87(2)(b) he had to actually leave the location and start walking. After telling § 87(2)(b) to leave, PO Ahearne gently put his hand on § 87(2)(b)'s shoulder and told him, “Take a hike.” PO Ahearne did not grab § 87(2)(b) hard and was just trying to be friendly. § 87(2)(b) reacted by pulling back, yelling, “Don’t touch me!” and taking a fighting stance while still holding his cane in one hand. PO Ahearne demonstrated that § 87(2)(b) bladed his body to the side and held his clenched fists up to chest level like he was trying to protect his face. § 87(2)(b) did not brandish his cane as though he was about to strike the officer, but he was still holding it in his hand.

PO Ahearne was afraid of getting punched or hit with the cane so, he grabbed § 87(2)(b) and pushed him a few steps. § 87(2)(b) and PO Ahearne then fell into a pile of garbage. PO Ahearne intentionally took § 87(2)(b) to the ground to create a safer situation and make it easier to handcuff him as he was already agitated. However, he did not intentionally push § 87(2)(b) into the pile of garbage. Aside from his fighting stance and hostility in the deli, § 87(2)(b) did not do anything else to be threatening. PO Ahearne did not take any other physical action prior to bringing § 87(2)(b) to the ground. PO Ahearne did not hit § 87(2)(b) on his face with an open or closed fist. PO Ahearne did not strike § 87(2)(b) in the face at all and PO Ahearne’s hands never went above § 87(2)(b)'s chest.

PO Ahearne stated he was threatened by § 87(2)(b)'s hostility in response to being asked to leave the establishment and his reaction to PO Ahearne touching him outside (assuming a “fighting stance”). PO Ahearne’s intention when handcuffing § 87(2)(b) was to remove him to the hospital and not to arrest him. PO Ahearne was never planning to arrest § 87(2)(b). PO Ahearne decided to remove § 87(2)(b) to the hospital because the staff at the deli did not want to press charges and PO Ahearne did not think a mentally sound person would react in a hostile manner to being asked to leave. PO Ahearne did not consult with a supervisor prior to calling EMTs.

PO Kelleher’s statement was generally consistent with PO Ahearne’s. He stated that when PO Ahearne put his hand on § 87(2)(b)'s shoulder and told him to leave, § 87(2)(b) bladed his body to PO Ahearne and raised his hands up by his face, in a “fighting stance.” § 87(2)(b) was also holding his cane, but PO Kelleher did not remember him having anything else in his hands. PO Kelleher did not make any other observations to that point that indicated that § 87(2)(b) was a threat to others or

himself. PO Ahearne responded to § 87(2)(b)'s actions by grabbing § 87(2)(b) by his shirt, physically walking him back a few steps, and placing him on the ground. PO Ahearne later told PO Kelleher that he did this so § 87(2)(b) would not have a chance to strike him first. PO Kelleher stated that § 87(2)(b)'s repeated refusal to comply with orders led PO Kelleher to think he was not fully coherent and that his behavior warranted an ambulance being called to remove him as an EDP as opposed to arresting him. After the officers handcuffed § 87(2)(b) PO Kelleher had a brief conversation with PO Ahearne in which they agreed that § 87(2)(b) should go to the hospital. PO Kelleher did not speak to EMTs when they arrived, but saw them have a conversation with § 87(2)(b) inside the ambulance. PO Kelleher did not hear the EMTs say § 87(2)(b) had to go to the hospital.

Detective Bonner stated that outside the store, § 87(2)(b) refused to leave the location and continued to argue loudly with PO Ahearne. Detective Bonner observed that § 87(2)(b) was in close proximity to PO Ahearne and put his hands up by his face, although he did not appear to be in a “fighting stance” and his fists were not balled. PO Ahearne and PO Kelleher took § 87(2)(b) down on top of a pile of garbage. Detective Bonner did not speak with PO Ahearne or PO Kelleher about why they took § 87(2)(b) to the ground. Detective Bonner did not see PO Ahearne strike § 87(2)(b). Detective Bonner stated that § 87(2)(b)'s behavior was combative, unreceptive, and irrational, as § 87(2)(b) was refusing orders, yelling and speaking in a loud voice, and wearing sunglasses for the entire encounter. Detective Bonner did not remember if § 87(2)(b) spoke with any of the store's staff, nor did he remember if § 87(2)(b) threatened anyone while he was inside the store. Detective Bonner stated that either PO Kelleher or PO Ahearne called an ambulance, but he did not remember discussing why they called the ambulance with other officers.

At 1:00 of PO Ahearne's BWC (**Board Review 01**), PO Ahearne tells § 87(2)(b) that because he did not buy anything, he was not a customer and he had to leave. § 87(2)(b) takes a step towards PO Ahearne and yells at him that he is a customer. PO Ahearne then tells § 87(2)(b) to “take a hike” and places his right hand on § 87(2)(b)'s left shoulder and his left hand on § 87(2)(b)'s left forearm. § 87(2)(b) says, “don't touch me, man,” and pulls his right arm away from PO Ahearne quickly. PO Ahearne then grabs § 87(2)(b)'s coat, near the collar with both hands and pushes him back towards the street and they fall into a pile of garbage bags. § 87(2)(b) screams in an extremely loud and high-pitched voice. At 3:20, PO Ahearne goes over the radio requesting EMS to respond for an “EDP job.”

PO Kelleher's BWC offers an alternate angle (**Board Review 03**). PO Ahearne puts his hand on § 87(2)(b)'s right arm and § 87(2)(b) rapidly pulls his arm back. PO Ahearne immediately grabs a hold of § 87(2)(b)'s jacket collar and pushes him backwards until they fall into the garbage bags.

According to hospital records obtained from § 87(2)(b) (**Board Review 16**), § 87(2)(b) was diagnosed with an “unspecified psychosis,” and an adjustment disorder with disturbance of conduct. Additionally, these medical records stated that he met the standards for any involuntary commitment.

From the aforementioned BWC videos, the investigation determined that PO Ahearne never struck § 87(2)(b) in the face as § 87(2)(b) alleged. Instead, PO Ahearne grabbed § 87(2)(b) by his jacket, which was near § 87(2)(b)'s face, but he did not punch him. Additionally, the BWC showed that § 87(2)(b) did not take a “fighting stance” by putting his hands up by his face. Instead, he pulled his arm away from PO Ahearne.

Patrol Guide Procedure 221-01 (**Board Review 17**) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect

life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application of force must be reasonable under the circumstances. In determining whether the use of force is reasonable members of service should consider the following:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject's violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

Patrol Guide Procedure 221-13 defines an emotionally disturbed person as a person who appears to be mentally ill or temporarily deranged and is conducting themselves in a manner likely to result in a serious injury to themselves or others. The Patrol Guide demands that emotionally disturbed persons be removed to the hospital (**Board Review 18**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C: Discourtesy: Police Officer Edward Ahearne spoke discourteously to § 87(2)(b)

At 1:32 of PO Ahearne's BWC (**Board Review 01**) a voice says, "take a fucking hike," to § 87(2)(b) as they struggle in the bags of garbage.

PO Ahearne initially did not remember using profanity toward § 87(2)(b). He stated to the investigation that he said "Take a hike" not "Take a fucking hike." After being shown the BWC footage, PO Ahearne acknowledged that he said, "take a fucking hike," to § 87(2)(b). He explained to the investigation that he made this statement because he was agitated and clarified that § 87(2)(b) was no longer free to leave at that point.

Patrol Guide Procedure 200-02 states that the department is committed to treating every citizen with compassion, courtesy, professionalism, and respect. Officers are expected to maintain a higher standard of integrity than is generally expected of others (**Board Review 19**).

§ 87(2)(g)

Allegation D: Force: Detective Joseph Bonner used physical force against § 87(2)(b)

Allegation E: Force: Detective Joseph Bonner struck § 87(2)(b) with a nightstick.

§ 87(2)(b) stated that while he was face down on the ground, already in handcuffs, Detective Bonner stood on the back of his feet and legs. Detective Bonner then turned § 87(2)(b) onto his back and then rubbed § 87(2)(b)'s chest with his nightstick and then hit him on the chest with it.

PO Ahearne and PO Kelleher both stated that they did not observe Detective Bonner stand on § 87(2)(b)'s legs or observe him touch § 87(2)(b) with his nightstick.

Detective Bonner said he did not stand on § 87(2)(b)'s legs. He also stated that while they waited for the ambulance to come, § 87(2)(b) was on the ground and stopped moving. Detective Bonner then asked § 87(2)(b) if he was okay and did a “sternum rub” (rubbing one’s knuckles on a victim’s sternum for signs of response) and § 87(2)(b) did not respond. He denied striking § 87(2)(b) with his nightstick or making any type of contact with § 87(2)(b) using his nightstick.

The four BWC videos obtained by the CCRB comprehensively cover the incident from the moment PO Ahearne grabs § 87(2)(b) to the point at which § 87(2)(b) is placed in an ambulance. At no point, in any of the BWC videos, does Detective Bonner step on § 87(2)(b)'s legs or touch § 87(2)(b) with his nightstick. At 07:15, in Detective Bonner’s BWC (**Board Review 07**), Detective Bonner asks § 87(2)(b) if he is ok and then bends down and grabs ahold of § 87(2)(b)'s shirt and shakes it gently for approximately ten seconds. When he was shown this portion of the BWC, Detective Bonner stated that was the “sternum rub” he mentioned earlier. While this “sternum rub” was not entirely dissimilar to the act § 87(2)(b) described Detective Bonner taking (rubbing his nightstick on § 87(2)(b)'s chest), it was clearly not done with a nightstick and did not rise to the level of physical force.

§ 87(2)(g)

Allegation F: Abuse of Authority: Police Officer Edward Ahearne damaged § 87(2)(b)'s property.

§ 87(2)(b) stated that while he was lying on the ground, his phone was on the ground as well and PO Ahearne stepped on the phone causing it to crack.

PO Ahearne stated that § 87(2)(b) was holding his phone when PO Ahearne pushed him. The phone fell to the ground at some point, but PO Ahearne did not see that. One of the officers recovered it and held onto it until EMTs arrived, then gave it to them. PO Ahearne did not step on § 87(2)(b)'s phone and did not recall the phone being damaged.

Detective Bonner stated that PO Diallo took § 87(2)(b)'s cell phone from § 87(2)(b) during the incident and he assumed that she had given it to either PO Ahearne or PO Kelleher. He did not observe PO Ahearne step on § 87(2)(b)'s cellphone.

PO Kelleher did not recall seeing § 87(2)(b)'s phone during the incident and did not see PO Ahearne step on it.

At 1:38 in PO Diallo's BWC (**Board Review 05**), she reaches down to § 87(2)(b) who at this point has been taken to the ground, and grabs his phone from his hand. She tells § 87(2)(b) "I have your phone." At 07:08 in PO Ahearne's BWC (**Board Review 01**), the phone can be seen in PO Diallo's hand. At 7:30 in PO Kelleher's BWC (**Board Review 03**), PO Diallo asks PO Kelleher if he has § 87(2)(b)'s wallet. PO Kelleher says he does and then PO Kelleher says, "Ok, I'll take his stuff." PO Diallo appears to hand PO Kelleher something. Then, at 7:50 in PO Ahearne's BWC (**Board Review 01**), PO Kelleher is holding the cell phone. At 13:30 of PO Kelleher's BWC (**Board Review 03**), PO Kelleher is still in possession of § 87(2)(b)'s phone and places it next to § 87(2)(b)'s other belongings as the officers pick § 87(2)(b) up and place him on a stretcher and then at 15:45 of PO Diallo's BWC (**Board Review 05**), PO Kelleher can be seen handing PO Ahearne § 87(2)(b)'s belongings to PO Ahearne in the ambulance. None of the BWC videos capture PO Ahearne stepping on § 87(2)(b)'s phone.

§ 87(2)(g)

Allegation H: Abuse of Authority: Police Officer Matthew Kelleher searched § 87(2)(b).
Allegation I: Abuse of Authority: Police Officer Edward Ahearne frisked § 87(2)(b).
Allegation J: Abuse of Authority: Police Officer Edward Ahearne searched § 87(2)(b).

It was undisputed that prior to the ambulance arriving, PO Kelleher opened § 87(2)(b)'s wallet and looked inside. PO Ahearne then frisked § 87(2)(b)'s pants pockets and a jacket pocket and pushed an object out of § 87(2)(b)'s pants pocket, exposing the object.

At 09:45 of PO Ahearne's BWC, PO Ahearne says, "Let me make sure this guy don't got nothing sharp on him." PO Kelleher can then be seen opening § 87(2)(b)'s wallet and saying, § 87(2)(b) Name sounds familiar." PO Ahearne then feels the outside of § 87(2)(b)'s left pants pocket and asks what the object inside is and whether it was another wallet. § 87(2)(b) does not respond. PO Ahearne then manipulates the object in the pocket so that it becomes visible outside the pocket. PO Ahearne then announces that the object is a container of Vaseline.

PO Ahearne said that he frisked § 87(2)(b) before putting him on the ambulance to ensure he had nothing sharp on him and protect the safety of EMTs and officers. PO Ahearne removed the Vaseline from § 87(2)(b)'s pocket to ensure it was not anything that could be used as a weapon because from outside § 87(2)(b)'s pocket the object felt completely unfamiliar.

PO Kelleher stated that he recovered § 87(2)(b)'s wallet, which fell to the ground during the struggle to handcuff him. PO Kelleher looked in § 87(2)(b)'s wallet for his ID, but did not otherwise look through the wallet. The only purpose for looking in the wallet was to obtain ID.

The Court of Appeals of New York held in People v. Reid, 24 NY3d 615 (2014), that a search must be incident to an actual arrest and not probable cause to an arrest that might have happened, but did

not. (**Board Review 20**).

Patrol Guide Procedure 221-13 demands that after restraining an EDP, officers must remove property that is dangerous to life or will facilitate escape (**Board Review 18**).

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)

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- § 87(2)(b) [REDACTED]
- [REDACTED]
- [REDACTED]
- PO Ahearne has been a member of service for seven years and has been a subject in eight complaints and sixteen allegations, of which none have been substantiated
 - § 87(2)(g) [REDACTED]
- Detective Bonner has been a member of service for 24 years and has been a subject in 25 complaints and 35 allegations, of which two were substantiated.
 - CCRB Case 201509976 involved two substantiated search allegations against Detective Bonner. The board recommended command discipline A, and the NYPD imposed no disciplinary action
 - § 87(2)(g) [REDACTED]
- PO Kelleher has been a member of service for three years and has been a subject in two CCRB complaints and three allegations, of which none have been substantiated.

Mediation, Civil and Criminal Histories

- § 87(2)(b) [REDACTED] declined to mediate this complaint.
- As of January 17, 2020, the New York City Office of the Comptroller has no record of any notice of claim being filed in regards to this complaint (**Board Review 22**).
- § 87(2)(b) [REDACTED]

Squad No.: 10

Investigator: <u>Matthew Corwin</u>	Inv. <u>Matthew Corwin</u>	<u>04/14/2020</u>
Signature	Print Title & Name	Date

Squad Leader: <u>Eric Rigie</u>	IM <u>Eric Rigie</u>	<u>04/14/2020</u>
Signature	Print Title & Name	Date

Reviewer: _____	_____	_____
Signature	Print Title & Name	Date